IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1841 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL MOHANLAL GOVINDLAL JASANI - Appellant(s)

Versus

PATEL GOVABHAI MANKADIA - Defendant(s)

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Appearance :

MR TV SHAH for Appellant(s) : 1,

MR RD DAVE for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 21/12/2005

ORAL JUDGMENT

This Appeal arises out of the judgment and award rendered by the learned Workmen's Compensation Commissioner at Rajkot in W.C. Case No.28 of 1982, whereby, the W.C. Commissioner rejected the appellant's application for compensation.

2.The appellant had preferred the said application claiming compensation of Rs.19,500/- from the respondent on the ground that while he was working as an employee labourer of the respondent, he met with an accident and sustained injuries on 22nd April, 1981. According to the appellant, he was employed for digging of a well and while he was climbing a ladder, one of the steps gave way and he fell down. He sustained fractures on his right hand and serious injuries in chest, ribs and was immobilized. He was admitted in Junagadh Hospital from 22nd April to 27th April, 1981. Injuries resulted into permanent partial disability, therefore, he served notice upon the respondent but, in vain and, therefore, he claimed the compensation of Rs.13,000/- and penalty of Rs.6,500/-.

3.On being served with the summons, the respondent filed written statement before the learned W.C. Commissioner at Exh.8, interalia, denying the averments made in the claim application. The respondent denied that the applicant – appellant was an employee engaged for digging the well. The case of the opponent – respondent has been that the applicant – appellant was entered into a contract to dig the well and in that regard a

document was also executed and earnest money paid. According to the opponent – respondent, the claimant was not entitled to any compensation, not being an employee.

4. Learned W. C. Commissioner, considered the rival side contentions and came to a conclusion that the claimant – appellant was a workman, but was not an employee of the respondent and, therefore, was not entitled to claim any compensation from the respondent. Ultimately, after giving finding on other aspects as to disability, etc., the learned W.C. Commissioner dismissed the claimant's application for compensation and aggrieved thereby the claimant has preferred this appeal.

5. Learned Advocate, Mr.Shah, appearing for the appellant submitted that learned Commissioner has committed an error in relying on so-called contract at Exh.30. According to Mr.Shah, only the signature part of the document was proved and the learned Commissioner erroneously relied upon the entire contents of the document. Mr.Shah, therefore, submitted that the entire process of evaluating the evidence has proceeded on an erroneous footing and, therefore, this appeal may be

allowed.

6. Learned Advocate, Mr.Dave, has opposed this appeal. According to him, there is no substantial question of law arising for determination by this Court. Apart from that, Mr.Dave, has indicated that the contents of Exh.30 have been duly proved by the respondent's side. Mr.Dave, also submitted that in the notice also execution of the contract is admitted by the claimant. According to Mr.Dave, the claimant, therefore, cannot retreat and say that the document was not executed. Learned Commissioner has properly assessed the evidence. Even, if there is an error, it would be an error on factual finding and cannot be considered as substantial question of law. Appeal therefore, be dismissed.

7. This Court, has taken into consideration the rival side contentions.

8. At the outset, it would be appropriate to note that this is an appeal preferred under Section 30 of the W.C. Act. The proviso to sub-section 1 clearly provides that such appeal can be entertained only when a

substantial question of law arises for determination by this Court and as a necessary consequences questions of fact cannot be gone into and reevaluated.

9. The only substantial question of law that learned Advocate for the appellant, Mr.Shah would raise and indicate is that though only the signature part of Exh.30 was proved and exhibited, the trial Court has ran into an error in taking into consideration the contents of the document as well, which was not permissible for the Commissioner to do. Though, technically this cannot be considered as a substantial question of law, in order that a substantial justice is rendered between the parties in an appeal, pending since 1985; this Court has examined the records and proceedings to examine the point raised by learned Advocate for the appellant. For that limited purpose the Court will have to enter into arena of examining the evidence on factual aspects.

10. On examining the evidence, it is found that the said document was exhibited in deposition of the claimant – appellant at Exh.19, where he admits to have signed document at Mark 9/1 which is then given Exh.30 with a

specific endorsement that only the signature part is admitted and, therefore, only that part is exhibited. Prima-facie, therefore, there would appear some substance in the contentions raised by learned Advocate, Mr.Shah. But, if the subsequent pieces of evidence are examined, it is clear that in deposition of opponent – Ravji Gova at Exh.47, the contents are proved and, therefore, it cannot be said that the learned Commissioner committed any error in relying on the document as a whole.

11.It was then contended that the document suffers from other defects like want of date of execution, etc., and that its execution was denied by the applicant – appellant. In this regard, also, it appears that before filing the claim application the applicant – appellant has issued notices and in those notices, there was reference to the document of contract Exh.30 and even to contents thereof. Learned Commissioner, therefore, considering this aspect, as well as, the other pieces of evidence viz. that the applicant had entered into similar contract with other persons as well, by assessing the evidence as a whole, came to a conclusion that it was a case of a contract and not a case of

employment.

12.There appears not any substantial question of law as such, which would arise for determination by this Court. Even, the evidence is judiciously appreciated and conclusion is arrived at, there is no perversity or arbitrariness in appreciation of the evidence by the learned Commissioner as a trial Court. The appreciation of evidence cannot be termed as capricious. Therefore, this Court finds no reason to take a different view in the matter. The appeal, therefore, must fail and stands dismissed. No order as to costs.

(A.L.DAVE, J.)

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